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**WEST VIRGINIA EDUCATION AND  
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JOHN MAYLE

v.

DOCKET NO. 89-01-387

BARBOUR COUNTY BOARD OF EDUCATION

DECISION

Grievant, John Mayle,<sup>1</sup> is employed by the Barbour County Board of Education (Board) and is presently classified as a bus operator. Mr. Mayle filed a level one grievance on May 23, 1989 in which he alleged a violation of W.Va. Code §18A-4-8b when another applicant was hired as a mechanic.<sup>2</sup> Gary Tenney, Director of Transportation, noted that he did not have the authority to grant the requested relief at level one, Superintendent William Phillips did not consider the matter at level two and the Board denied the

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<sup>1</sup>Mike Adams was a co-grievant in this matter until his withdrawal, for medical reasons, at the level four hearing.

<sup>2</sup>While the grievant initially had included charges of discrimination and nepotism he did not address these charges at level four and they are considered abandoned.

matter following a hearing held at level three.<sup>3</sup> A level four appeal was filed on July 26, 1989; counsel for the Board contacted the grievant's counsel by letter dated August 15 stating his desire to submit the matter for decision based upon the record. Grievant's counsel responded to the undersigned examiner by letter of November 17 that submission was not acceptable. A level four hearing was then conducted on December 7, 1989.

The facts of this matter are as follows. The Board posted a notice of vacancy dated April 20, 1989, for the position of mechanic at the county bus garage. The qualifications listed were a high school diploma, relevant mechanical and diesel engine training, the ability to transmit verbal and written communication, the ability to secure West Virginia bus operators' license, have or be able to qualify as a state vehicle inspector and two (2) years mechanical experience. Seven applications were received including that of the grievant. The position was first offered to Mr. Carl Bolton, who declined the offer, and then to Mr. John Edge, who accepted the position.

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<sup>3</sup>Although W.Va. Code §18-29-4 provides that an evidentiary hearing be held at level two rather than level three the procedure in this matter seems reasonable in that the Superintendent had made the initial recommendation to hire the successful applicant. Thus, conducting a hearing at level three allows the Board to review the Superintendent's action, whereas a hearing at level two generally is a formality in these cases with the Superintendent nearly always confirming his own action.

At the level four hearing the grievant argued that he was entitled to the position as the most senior applicant if he was qualified as defined by statute. The Board argues that because none of the applicants were qualified by virtue of holding the position title it was the Superintendent's responsibility to determine and recommend the most qualified applicant for employment.

In support of his decision Superintendent Phillips submitted the applications and resumes of Mr. Edge and the grievant and a chart of the four applicants who were interviewed indicating their mechanical experience, skills and licenses.<sup>4</sup> In addition to thirteen years of employment with the Board as a bus operator, the grievant listed his prior experience as a mechanics' assistant and truck driver for Kelley Brothers in 1974-75, one year as a mechanic and truck driver for Nada Coal and two years as a personal assistant and farm mechanic.<sup>5</sup> At the level four hearing the grievant indicated that the positions at Kelley Brothers and Nada

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<sup>4</sup>The chart simply listed prior work experience, indicated "yes" or "no" for licenses held, "yes", "no", or "little" for specific skills relating to air brakes, tubeless tires, welding, painting and electrical systems and whether the applicant had been previously employed by the Board as a substitute mechanic and/or bus operator.

<sup>5</sup>The grievant testified at level four that he had earned an additional two years' experience as a truck driver/mechanic with the Benson company; however, this information was not available to Superintendent Phillips when making his recommendation and therefore it would be improper to consider it at this time.

Coal were primarily as a truck operator with some mechanical work done on the road such as repairs to lights and brakes.

Mr. Edge has been employed by the Board as a substitute mechanic for three years and was previously engaged for eleven years as a heavy equipment operator, which included routine maintenance and repairs and assisting in major repairs, at Ten-A Coal Company. He completed auto, truck and farm equipment repairs, including tires, body repair and painting as the owner of service station for three years. He worked for the West Virginia Department of Highways for five years as a store room clerk/equipment operator during which time he performed some mechanical work. While in the Army for two years he was assigned as a crane and shovel operator. In addition to this job experience he listed body repair and painting experience with his own motor vehicles and contract work for individuals.

In addition to the more extensive and recent mechanical experience earned by Mr. Edge, Superintendent Phillips determined that he could work independently repairing air brakes and electrical systems, change tubeless tires, weld and paint, while the grievant had limited experience working with air brakes and no experience in painting. Based upon this information Superintendent Phillips determined that Mr. Edge was the most qualified applicant and recommended his employment.

W.Va. Code §18A-4-8b(b) provides that decisions affecting promotion and filling of service personnel positions

be made on the basis of seniority, qualifications and evaluation of past service. Qualifications shall mean that the applicant holds a classification title in the category of employment or by meeting the definition of the job title.<sup>6</sup> These provisions have been interpreted to require that the most senior candidate for a service position is entitled to the assignment if he is qualified and has had satisfactory evaluations.<sup>7</sup> Kemplin and Wolfe v. Kanawha County Board of Education, Docket Nos. 89-20-582, 583 (March 19, 1990); Moon v. Wayne County Board of Education, Docket No. 50-88-245 (April 20, 1989). Accordingly, there is no "most qualified" standard for the hiring of service personnel as there is with professional personnel, Basham v. Kanawha County Board of Education, Docket No. 89-20-581 (Nov. 21, 1989), and Superintendent Phillips applied an incorrect standard when determining which applicant he would recommend.

Because none of the applicants held the classification title of "mechanic" the grievant, who was the most senior applicant, would be entitled to the position if he can meet

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<sup>6</sup> Applicants holding the classification title must be given first opportunity for promotion and filling vacancies and then those who meet the definition of the job title shall be considered; however, because none of the applicants held the classification title none were entitled to first consideration for the position.

<sup>7</sup> Neither party has addressed prior evaluations which leads to the conclusion that they were not dispositive to the issue.

the definition of the job title as defined in W.Va. Code §18A-4-8. That section defines "mechanic" as "personnel employed who can independently perform skilled duties in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system." In order to determine whether the grievant was entitled to the position it will be necessary to determine whether he can independently perform the duties required of mechanic. This could be determined by administering a competency test. Adkins v. Logan County Board of Education, Docket No. 23-86-024 (May 22, 1986). If the grievant's performance indicates that he can independently perform the duties of mechanic he shall be awarded the position effective May 16, 1989, with any and all backpay and benefits, less any set-off.

In addition to the foregoing narration it is appropriate to make the following specific findings of fact and conclusions of law.

#### **Findings of Fact**

1. Grievant, John Mayle, is employed by the Barbour County Board of Education and is presently classified as a bus operator.

2. In April, 1989 the grievant and six other individuals applied for a posted vacancy of mechanic at the county bus garage. The qualifications listed for this position

were a high school diploma, relevant mechanical and diesel engine training, the ability to transmit verbal and written communication, the ability to secure a West Virginia bus operators' license, have or be able to qualify as a state vehicle inspector and two years mechanical experience.

3. None of the applicants held the classification title of mechanic at the time the position was filled.

4. Following an interview of four applicants the position was offered to that individual determined to be the most qualified. That applicant declined to accept the position which was then offered to and accepted by John Edge.

5. The most senior applicant, Mike Adams, withdrew his grievance leaving the grievant as the most senior applicant for the position.

#### Conclusions of Law

1. Decisions affecting the promotion and filling of service personnel positions are to be made on the basis of seniority, qualifications and evaluations of past service. Qualifications shall mean that the applicant hold a classification title in that category of employment or by meeting the definition of the job title. W.Va. Code §18A-4-8b(b).

2. If the most senior candidate for a service position is qualified for the position and has had satisfactory evaluations, he is entitled to the position. Hyre v. Upshur

County Board of Education, Docket No. 50-88-084 (Nov. 2, 1988); King v. Ritchie County Board of Education, Docket No. 43-87-308-3 (Oct. 31, 1988).

3. The Superintendent failed to provide the applicants a reasonable opportunity to establish their qualifications by meeting the definition of the job title; e.g. no competency test was administered to establish with certainty the applicants' ability to independently perform the duties of the position.

Accordingly, the grievance is **GRANTED** to the extent that the Board is Ordered to re-evaluate the grievant allowing him an opportunity to establish that he is qualified by meeting the definition of the job title. If the grievant is found to be qualified he shall be awarded the position of mechanic effective May 16, 1989 and paid the difference between the pay earned as a bus operator and the pay he would have earned if holding the position of mechanic.



Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Barbour County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. Code §18-29-7) Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.

DATED:

April 26, 1990

Sue Keller  
SUE KELLER

SENIOR HEARING EXAMINER